

Att'y Dkt. No. US-1350

U.S. App. No: 09/636,458

**REMARKS**

Claims 9-29 are pending; claims 11, 17, 19, and 21-28 have been cancelled.

Claims 9, 12, 13, 18, 29 have been amended. Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

An amended abstract has been submitted herewith as requested by the Examiner to better reflect the elected subject matter.

A substitute specification, absent the claims, has been submitted herewith, along with a marked-up copy as required by the Examiner to correct for grammatical errors due to translation inefficiencies. The undersigned hereby states that the substitute specification contains no new matter.

***The Rejection of Claims 9-17 and 29 under 35 U.S.C. §101***

Claims 9-17 and 29 were rejected under 35 U.S.C. §101 for allegedly indefinite being directed to non-statutory subject matter. Applicants have amended claim 9 and 29 to incorporate the word "isolated". Therefore, Applicants respectfully request that the rejection be withdrawn.

***The Rejection of Claims 9, 10, 14-21, 24-29 under 35 U.S.C. §112, 1<sup>st</sup> Paragraph***

Claims 9, 10, 14-21, 24-29 were rejected under 35 U.S.C. §112, 1<sup>st</sup> paragraph, as allegedly failing to comply with the written description requirement. In particular, the Examiner has rejected the claims as allegedly containing new matter in the recitation of the homology limitation. The claims have been amended to incorporate the limitations of claim 11, which was not rejected for new matter. Claim 11 has been cancelled.

Therefore, withdrawal of this rejection is respectfully requested.

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Claims 14-17 were also rejected under 35 U.S.C. §112, 1<sup>st</sup> paragraph as allegedly failing to comply with the enablement requirement. The Examiner has objected to the deposit of the strains as not adequate for fulfilling the requirements of enablement. However, as is evidenced by applicants' submission of deposit certificates with the filing of the application for each of the strains under the Budapest Treaty, it is clear that applicants deposited the strains. It is not clear why the Examiner is questioning the deposit since the forms are translated from the Japanese and are very clear. These forms were filed with the original application, and applicant has attached copies for the Examiner's convenience. Furthermore, applicants hereby state that all restrictions placed thereon on the availability to the public of the deposited material will be irrevocable removed upon the granting of the patent, in accordance with 37 C.F.R. §1.808(a)(2). Therefore, withdrawal of this rejection is respectfully requested.

***The Rejection of Claims 9-29 under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph***

The Examiner has rejected the claims under 35 U.S.C. §112, 2<sup>nd</sup> paragraph as allegedly being indefinite to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants assert the amendments to the claims adequately address each of the Examiner's concerns regarding indefiniteness. In particular, language has been added to clarify the plasmid and protein sequences, the antecedent basis for *Corynebacterium thermoaminogenes*, and the steps in the method claims. Therefore, withdrawal of this rejection is respectfully requested.

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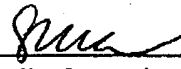
***Conclusion***

For at least the foregoing reasons, Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of the present patent application is therefore respectfully solicited.

If Examiner Guzo believes that a telephone conference with the undersigned would expedite passage of the present patent application to issue, he is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and authorized to be charged to our deposit account 50-3077.

Respectfully submitted,

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